

## RULE PROPOSALS

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### INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register:

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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## CORRECTIONS

### THE COMMISSIONER

#### Security and Control

#### **Proposed Readoption with Amendments: N.J.A.C. 10A:3**

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 2A:154-3 and 4, 2C:58-15, 30:1B-6, 30:1B-10, 30:4-123.47c, 52:14B-5.1.c, and 52:17B-169.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-155.

Submit written comments by November 14, 2014, to:

Karin M. Burke, Esq., Acting Supervisor  
Administrative Rules Unit  
Office of the Commissioner  
New Jersey Department of Corrections

PO Box 863  
Trenton, New Jersey 08625-0863  
or via e-mail at [ARU@doc.state.nj.us](mailto:ARU@doc.state.nj.us).

The agency proposal follows:

### **Summary**

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10A:3 expires on August 20, 2014. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration is extended 180 days to February 16, 2015. The Department has reviewed these rules and, with the exception of the amendments proposed herein, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules are, therefore, proposed for readoption at this time.

A summary of the rules proposed for readoption, by subchapter, follows:

Subchapter 1 provides the purpose and scope of the chapter, the definitions of words and terms used, and forms related to security and control.

Subchapter 2 sets forth rules regarding recommending the placement of an inmate into and removing an inmate from keep separate status, which refers to the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates.

Subchapter 3 establishes the rules regarding the use of force by custody staff members, both on-duty and off-duty.

Subchapter 4 sets forth provisions for the use of firearms while on-duty and use of personal firearms while off-duty.

Subchapter 5 establishes rules which govern the search of inmates and facilities and includes the use of search plans, security devices, use of scanning/testing devices, testing for non-alcoholic prohibited substances, and collection, storage, and analysis of specimens.

Subchapter 6 provides the rules that govern the seizure and disposal of contraband.

Subchapter 7 establishes the policies and procedures for conducting polygraph examinations.

Subchapter 8 is reserved.

Subchapter 9 provides the rules for the transportation of inmates.

Subchapter 10 sets forth the security procedures for administrative transfers of inmates from satellite units and community based programs.

Subchapter 11 sets forth rules regarding the identification of inmates as members of a security threat group(s).

In 2011, the Department of Corrections submitted a Reorganization and Career Enhancement Proposal (“Reorganization”) to the Civil Service Commission (CSC) to request the replacement of the existing civil service titles of Director of Custody Operations 1 and 2 and Correction Captain with one new civil service title, Correction Major. The new title was created to consolidate comparable functions performed by custody supervisory staff. The CSC unanimously approved the change in the State Classification Plan requested by the Department at the regular meeting of the CSC on October 5, 2011, in Trenton, New Jersey.

In accordance with the CSC approval of the Reorganization, the reference to “Captain” in subsection (b) of N.J.A.C. 10A:3-5.2, Search plan, and to “Director of Custody Operations” in scattered provisions of Chapter 3, to wit: N.J.A.C. 10A:3-3.4(a)8, 3.7(c), 4.2(e)1 and 2, 4.3(f), 4.8(e) and (e)2, 5.4(c), and 5.10(b)8, respectively, are thus deleted and replaced with “Correction Major” to be consistent with existing civil service titles currently utilized in the Department.

Additionally, the phrase “no less than Captain” has been deleted in N.J.A.C. 10A:3-5.2(b) when referring to the rank of the Institutional Search Plan Coordinator. As noted, the Reorganization provided for the creation of the title of Correction Major which is now the highest ranking custody staff member within the Department. The existing language could imply that a higher rank exists than that of Correction Major. Such language is no longer necessary and has been deleted accordingly.

As the Department has determined that the comment period for this notice of proposal shall be 60 days, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption with amendments are anticipated to have an overall positive social impact. In the day-to-day management of correctional facilities, security and control regulations are among the most important tools used to help ensure the safety of staff, inmates, visitors, and volunteers. The rules proposed for readoption with amendments at N.J.A.C. 10A:3 will help ensure the orderly operation of correctional facilities. Because custody staff members who have been sworn as peace officers have the authority to use force when necessary to accomplish lawful ends, the rules proposed for readoption with amendments clarify issues related to using reasonable and necessary force. Every custody staff member is expected and required to take appropriate action in security related situations, and the rules proposed for readoption with amendments should provide guidance that will help ensure that custody staff members react appropriately when confronted with security and control related situations. The proposed amendments are necessary to reflect the Department’s current practice and procedure and to update existing titles. The proposed amendments are necessary for the purpose of providing rules that comply with State law.

### **Economic Impact**

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments is met by the Department through the established budget with funds allocated by the State.

#### **Federal Standards Statement**

The rules proposed for readoption with amendments are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The rules proposed for readoption with amendments are not subject to any Federal statutes, requirements or standards; therefore, a Federal standards analysis is not required.

#### **Jobs Impact**

The rules proposed for readoption with amendments will cause neither the generation nor the loss of any jobs.

#### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on housing affordability and there is an extreme unlikelihood that the rules would evoke a change in the average cost associated with housing in New Jersey. The rules proposed for readoption with amendments concern security and control, and affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

#### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will have no impact on smart growth development and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The rules proposed for readoption with amendments concern security and control, and affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:3.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 3. USE OF FORCE

#### 10A:3-3.4 Deadly force; when justified and when restricted

(a) Deadly force may be used against persons, consistent with provisions of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and upon authorization of the following:

1. – 7. (No change.)

8. [The Director of Custody Operations] **A Correction Major**; or

9. (No change.)

(b) – (m) (No change.)

#### 10A:3-3.7 Reports

(a) – (b) (No change.)

(c) The shift commander shall forward, as soon as possible, all special reports to the Special Investigations Division of the correctional facility and [the Director of Custody Operations] **a Correction Major** for review. The [Director of Custody Operations] **Correction Major** shall forward all reports to the Administrator. The Administrator shall then report the incident in accordance with N.J.A.C. 10A:21, Reports.

### SUBCHAPTER 4. USE OF FIREARMS WHILE ON-DUTY AND USE OF PERSONAL FIREARMS WHILE OFF-DUTY

#### 10A:3-4.2 On-duty firearms training, qualification, and requalification

(a) – (d) (No change.)

(e) Each [Director of Custody Operations] **Correction Major**, Unit Chief, or their designee shall be responsible for preparing and maintaining a current master list of each custody staff member authorized to carry a firearm.

1. The master list shall be maintained by [the Director of Custody Operations] **a Correction Major**, Unit Chief, or their designee to indicate the custody staff member's firearm qualification date (new or expired).

2. In the event that a custody staff member is assigned to a post that requires the issuance of a firearm for that custody staff member's exclusive use while on-duty, [the Director of Custody Operations] **a Correction Major**, Unit Chief, or their designee shall maintain a list that indicates the custody staff member's issued firearm, model name, and number, and serial number of the firearm.

#### 10A:3-4.3 On-duty firearm

(a) – (e) (No change.)

(f) When a State of New Jersey, Firearms Unit Weapons Card, official photo identification card, or badge of the New Jersey Department of Corrections is believed to have been lost or stolen, the custody staff member shall notify the local law enforcement authorities and [the Director of Custody Operations] **a Correction Major**, Unit Chief, or their designee as soon as practicable.

#### 10A:3-4.8 Off-duty firearms training, qualification, and requalification

(a) – (d) (No change.)

(e) [The Director of Custody Operations] **A Correction Major** or designee at each correctional facility shall be responsible for preparing and maintaining a current master list of each employee authorized to carry an off-duty firearm.

1. (No change.)

2. Each time the employee registers a firearm, [the Director of Custody Operations] **a Correction Major**, or designee, is responsible for comparing the firearms qualification date, firearm model name and number, and firearm serial number contained on the master list against the State of New Jersey, Firearms Unit Weapons Card accompanying the personal firearm.

(f) – (g) (No change.)

### SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

#### 10A:3-5.2 Search plan

(a) (No change.)

(b) Each correctional facility shall appoint a custody staff member[, of a rank no less than Captain,] **of the rank of Correction Major** as Institutional Search Plan Coordinator.

(c) (No change.)

#### 10A:3-5.4 Inspection of security devices

(a) – (b) (No change.)

(c) Inspections of security devices shall be conducted continuously and systematically but scheduled to avoid an observable or predictable routine. The results of all inspections shall be submitted in writing to the shift commander for review by [the Director of Custody Operations] **a Correction Major**.

#### 10A:3-5.10 Testing for prohibited substances

(a) (No change.)

(b) Inmates shall be tested:

1. – 7. (No change.)

8. When the Administrator, Associate Administrator, Assistant Superintendent, or [the Director of Custody Operations] **a Correction Major** orders all inmates of a particular housing unit, work detail, or other functional unit to be tested;

9. – 10. (No change.)

(c) – (d) (No change.)